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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

GRANT W. BECKLUND,

Plaintiff, Cross-defendant and
Appellant,

v.

WILLIAM GABEL et al.,

Defendants and Respondents;

GABEL, COOK & ASSOCIATES,

Defendant, Cross-complainant and
Respondent.

E046778

(Super.Ct.No. RIC472729)

OPINION

APPEAL from the Superior Court of Riverside County. Michael B. Donner,
Judge. Affirmed.

Sands & Associates, Leonard S. Sands, Heleni E. Suydam, and Kris Demirjian for
Plaintiff, Cross-defendant and Appellant.

Gresham Savage Nolan & Tilden, Robert J. Hicks, and Jaime N. Ries for
Defendants, Cross-complainant and Respondents.

Plaintiff Grant W. Becklund appeals an order denying his motion to disqualify Attorney Kenneth Stream and his law firm, Gresham Savage Nolan & Tilden, from representing defendant corporation, Gabel, Cook & Becklund, Inc., and defendants, Craig Cook and William Gabel, individually. Becklund contends Stream and his law firm should be disqualified because Stream's representation of the corporation conflicts with his former representation of Becklund. Becklund further contends Stream should be disqualified because Cook's and Gabel's interests are adverse to those of the corporation.

We conclude Becklund has failed to establish that the trial court abused its discretion in denying Becklund's motion for disqualification. There was sufficient evidence supporting the court's finding that Stream never represented Becklund, and the interests of the corporation, Cook, and Gabel (defendants) are not in conflict.

The disqualification order is affirmed.

1. Factual and Procedural Background

In 1980, Cook, Gabel, and Becklund founded and incorporated Gabel, Cook & Becklund, Inc. (the corporation), a close corporation. The corporation engaged in civil engineering, land surveying, and planning. Cook, Gabel, and Becklund were the sole directors and shareholders of the corporation, each holding one-third of the outstanding shares. The three held co-equal authority on management of the corporation and, as employees of the corporation, received the same salary. Gabel was president, Cook was treasurer, and Becklund was secretary of the corporation.

In November 2003, Cook and Gabel, with the assistance of Attorney Kenneth Stream, removed Becklund as a corporation director and officer, and terminated his

employment with the corporation. Becklund did not object to terminating his relationship with Cook, Gabel, or the corporation, but insisted on being paid the full value of his ownership interest in the corporation based on the net book value of his shares.

Cook and Gabel, also with Stream's assistance, created a new corporation, Gabel, Cook & Associates, Inc., which was intended to replace the existing corporation.

In 2003, Cook and Gabel agreed to redeem Becklund's shares in the corporation, but ultimately Cook, Gabel, and Becklund were unable to reach an agreement as to the net book value of the shares. Becklund continues to hold one-third of the corporation's outstanding shares.

On June 4, 2007, Becklund filed a complaint for damages against defendants. The complaint contains causes of action for breach of contract, breach of the good faith covenant, conversion, breach of fiduciary duty, fraud, money had and received, constructive trust, and resulting trust. Becklund alleges in his complaint that Cook and Gabel failed to purchase Becklund's shares as agreed and failed to pay him his fair share of proceeds received from the sale of certain corporation real property. Becklund also complains that Cook and Gabel fraudulently misrepresented to him that they would pay the fair net book value of his shares. The corporation, Cook, and Gabel are represented in this action by Stream's law firm.

Defendants answered Becklund's complaint and filed a cross-complaint, first amended cross-complaint, and second amended cross-complaint against Becklund for breach of fiduciary duty. The corporation alleged that Becklund's employment with the corporation was terminated on December 31, 2003, for failure to perform his duties as an

officer of the corporation; to prepare invoices for his projects; to provide back-up documentation requested by clients; and to communicate with clients and with Cook and Gabel, resulting in a significant loss of business and revenue.

In May 2008, approximately 10 months after defendants appeared in the action, Becklund moved to disqualify defendants' attorneys, Stream and his law firm, under California Rules of Professional Conduct, rule 3-310(C) and (E).¹ Becklund argued in his motion that Stream's representation of defendants created an impermissible conflict with Stream's previous representation of Becklund. Becklund also argued Stream and his law firm should be disqualified from representing Cook and Gabel in addition to the corporation because the corporation did not consent to such dual representation.

Defendants opposed Becklund's disqualification motion, arguing that Stream represented the corporation, not its constituents, and also separately represented Gabel and Cook, whose interests were not adverse to the corporation. Defendants asserted Becklund was neither a current nor former client of Stream. Stream began representing Cook and Gabel as individuals in 2003 for the purpose of forming a new, separate business entity, Gabel, Cook & Associates, Inc. In addition, defendants argued Becklund's motion to disqualify should be denied because of Becklund's prejudicial delay in bringing the motion as an abusive tactic.

On September 4, 2008, the trial court heard and denied Becklund's disqualification motion. During the motion hearing, the court explained it intended to

¹ Unless otherwise noted, all references to rules are to the California Rules of Professional Conduct.

deny Becklund's motion because representation of the corporation did not also constitute representation of the corporation's constituents, such as Cook, Gabel, and Becklund, under rule 3-600(A). The court noted that *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 (*Woods*), cited by Becklund, was factually distinguishable and was decided before enactment of rule 3-600(A). The court concluded, based on a review of the various evidence, that Stream never represented Becklund and there was no evidence that Becklund disclosed any confidential information to Stream that warranted removing him as defendants' attorney.

2. Standard of Review of Disqualification Motion

A motion to disqualify an opposing party's counsel affects important interests, including "a client's right to chosen counsel, an attorney's interest in representing a client, the financial burden on a client to replace disqualified counsel, and the possibility that tactical abuse underlies the disqualification motion. [Citations.] Nevertheless, determining whether a conflict of interest requires disqualification involves more than just the interests of the parties." (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145, fn. omitted.)

A trial court's authority to disqualify an attorney from representing a party to proceedings derives from its inherent power to "control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." (Code Civ. Proc., § 128, subd. (a)(5).) "The power is frequently exercised on a showing that disqualification is required under professional standards governing avoidance of conflicts

of interest or potential adverse use of confidential information.” (*Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1723-1724 (*Responsible Citizens*).)

The issue of disqualification centers on the conflict between a client’s right to counsel of their own choosing and the need to maintain ethical standards of the legal profession. (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 846.) Disqualification motions require a balancing of competing policy considerations. (*Responsible Citizens, supra*, 16 Cal.App.4th at p. 1725.) “. . . On the one hand, a court must not hesitate to disqualify an attorney when it is satisfactorily established that he or she wrongfully acquired an unfair advantage that undermines the integrity of the judicial process and will have a continuing effect on the proceedings before the court. [Citations.] On the other hand, it must be kept in mind that disqualification usually imposes a substantial hardship on the disqualified attorney’s innocent client, who must bear the monetary and other costs of finding a replacement. . . .’ [Citations.]” (*Ibid.*)

We review the trial court’s denial of a disqualification motion for an abuse of discretion, viewing the evidence in a light most favorable to the prevailing party and accepting as correct all of the express and implied findings of the trial court supported by substantial evidence. (*City National Bank v. Adams* (2002) 96 Cal.App.4th 315, 322.) “[W]here there are no material disputed factual issues, the appellate court reviews the trial court’s determination as a question of law. [Citation.]” (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc., supra*, 20 Cal.4th at pp. 1143-1144.)

3. Supporting and Opposing Evidence

Becklund's motion to disqualify was supported by the declarations of Becklund and his attorney, Leonard Sands; deposition testimony of Becklund taken in August 2008; and deposition testimony of Cook taken in March 2008. According to Cook's deposition testimony, Stream began representing the corporation in the early 1980's. Stream was consulted by Cook, Gabel, and Becklund concerning the corporation's legal matters.

Cook testified at his deposition that in early 2003, Cook and Gabel began planning to oust Becklund from the corporation. They considered dissolving the corporation. They did not want Becklund working with them because he was causing them to lose business. In early 2003, Cook and Gabel personally retained and consulted Stream in this regard. Stream provided legal advice to Cook and Gabel in furtherance of terminating Becklund's participation in the corporation's business, rather than dissolving the corporation. Stream also assisted Cook and Gabel in incorporating a new corporation, Gabel, Cook & Associates, Inc., which was intended to be used as a successor entity to the corporation.

According to Becklund's declaration, Stream did transactional work for the corporation and represented the corporation in litigation. Becklund did not learn of Cook and Gabel's plan to terminate their business relationship with him and oust him from the corporation or that Stream was advising them in these matters until November 2003. In December 2003, Cook and Gabel removed Becklund as an officer and director of the corporation. Becklund still holds a one-third interest in the corporation.

Becklund states in his declaration that in 2003, while Cook, Gabel, and Stream were secretly planning to eliminate Becklund from the corporation, Cook, Gabel, and Becklund agreed the corporation should retain ownership of certain properties rather than sell them. In addition, Becklund agreed to use corporate funds to maintain the properties and that net cash should be retained by the corporation rather than distributed among the principals. Becklund claims he would not have agreed to this had he known Cook and Gabel were planning to oust him from the corporation. Becklund asserts that the corporation owes him his share of proceeds for the sale of a 2006 sale of corporation property.

Defendants' opposition is supported by copies of various correspondence; corporate documents related to removing Becklund from the board of directors and changing the corporation name to Gabel, Cook & Associates, Inc.; the deposition of Becklund; and declarations of Gabel and defendants' attorneys, Robert Hicks and Stream.

According to Gabel's declaration, beginning in the late 1980's, Stream provided the corporation with legal services, including representation relating to real property leasing and title issues, collection on accounts, reviewing engineering project contracts, and mechanic's liens. Stream also defended the corporation in several construction defect lawsuits. Stream communicated primarily with Gabel, who managed the corporation's business and legal affairs until Gabel moved out of state in 1997. Stream thereafter communicated primarily with Cook. Gabel claimed Stream had very little contact with Becklund.

Gabel further stated in his declaration that in mid-2003, he and Cook, as majority shareholders and in the best interests of the corporation, removed Becklund as an officer and director of the corporation because Becklund was destroying the corporation. Becklund had failed to collect on accounts, manage his projects, follow through on client inquiries, and perform in accordance with his fiduciary duties. Becklund's clients had threatened to sue the corporation, and various other clients refused to do any further business with the corporation. Because of Becklund, the corporation was losing hundreds of thousands of dollars on accounts he had failed to bill, collect, or manage properly.

According to Gabel's and Stream's declarations, in June 2003, Stream began advising the corporation on its options after Cook and Gabel decided to remove Becklund as a director and officer. Stream informed Cook and Gabel that if they intended to remove Becklund as an officer and director, the corporation had a duty to notify Becklund of the board of directors meeting during which Cook and Gabel intended to vote to remove him. Stream believed he could represent Cook and Gabel individually as to how the corporation could continue operating after Becklund's removal. Stream, Cook, and Gabel considered splitting the corporation into two corporations by creating an entity for Becklund and a separate entity for Cook and Gabel. In furtherance of this option, Stream set up the corporation, Gabel, Cook & Associates, Inc., but the corporation never became active.

Gabel stated in his declaration that he and Cook believed that, as the corporation's majority shareholders, they were acting in the corporation's best interests when they

terminated Becklund. Becklund's interests had become adverse to those of the corporation. Becklund was harming the corporation's goodwill.

Cook and Gabel personally served Becklund on November 10, 2003, with a notice of the shareholders and board of directors meeting on November 21, 2003, during which they would vote to remove Becklund as a corporation director and officer. Becklund was also notified that during the meeting, dissolving the corporation would be discussed.

Stream stated in his declaration that on November 14 Becklund appeared at Stream's office and asked Stream to explain the notice. Stream told Becklund he could not provide Becklund with any legal advice because Stream did not represent Becklund. Stream added that Becklund should get an attorney.

Four days later, Attorney George Reyes of Best, Best & Krieger contacted Stream and told Stream he was representing Becklund. Stream and Reyes met and discussed whether there were any conflicts between Reyes's and Stream's clients. Stream and Reyes concluded that since Becklund's interests were adverse to the corporation, Cook and Gabel would need to waive Reyes's representation of Becklund because Reyes's firm had previously provided legal services to the corporation. Cook and Gabel agreed to waive any potential conflict in Reyes representing Becklund. Stream and Reyes concluded no other waivers were required because there were no conflicts arising from Stream representing the corporation, as well as Cook and Gabel individually, since their interests were not adverse to each other.

At the board meeting on November 21, Becklund was removed as an officer and director of the corporation.

In December 2003, Reyes and Stream agreed that dissolving the corporation and creating two new corporations would not be in the best interests of the corporation or Cook, Gabel, and Becklund. Therefore, in January 2004, Stream prepared and filed with the Secretary of State a certificate of amendment of articles of incorporation, changing the name of the corporation to Gabel, Cook & Associates, Inc. Meanwhile, for the next two years, Cook, Gabel, and Becklund attempted to execute a buyout agreement as to Becklund's shares, without success.

In early 2007, Becklund's new attorney, Leonard Sands, contacted Stream and told him a conflict existed between Stream's representation of the corporation and Becklund. Stream told Sands the conflict issue had already been discussed and addressed years before. Nevertheless, Sands and Becklund continued to assert there was a conflict, and Stream insisted there was none.

According to Stream, he never represented Becklund and therefore there was no conflict in his representation of defendants. Stream claimed he only had incidental communications with Becklund, with the exception of when Becklund served as an expert witness in a case Stream was handling for another client. Stream stated in his declaration that he never represented Becklund individually or provided him with any legal advice in connection with Becklund's personal matters. Stream also claimed Becklund never shared with Stream any confidential or personal information. Stream did not set up the corporation or provide legal services concerning ongoing corporate transactional matters. These types of matters were handled by other attorneys.

4. Motion to Disqualify Defendants' Attorneys

Becklund contends that because Becklund was a client of Stream and provided Stream with confidential information, Stream should be disqualified from representing defendants. Becklund asserts that disqualification is required because his and defendants' interests conflict.

Rule 3-310(C) provides, in relevant part: "A member shall not, without the informed written consent of each client: [¶] (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or [¶] (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict" Under rule 3-310(E), "[a] member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment."

Based on rule 3-310, courts have recognized there are "[t]wo ethical duties . . . entwined in any attorney-client relationship. First is the attorney's duty of confidentiality" and "second is the attorney's duty of undivided loyalty to the client. [Citation.]" (*City and County of San Francisco v. Cobra Solutions, supra*, 38 Cal.4th at p. 846.)

Before we consider whether there was a conflict, we must first determine whether there was substantial evidence supporting the trial court's finding that Stream never represented Becklund. If Stream never represented Becklund, there would be no basis for

disqualifying Stream, even if Becklund's interests conflicted with those of the defendants.

Stream's representation of the corporation did not automatically result in representation of Becklund as a director, officer and shareholder. (Rule 3-600(A); *Responsible Citizens, supra*, 16 Cal.App.4th at pp. 1721, 1731.) According to rule 3-600(A), the corporation is the client, not the corporation's constituents: "In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement." (Rule 3-600(A).)

In *Responsible Citizens, supra*, 16 Cal.App.4th 1717, the court reversed the trial court's ruling granting disqualification of an attorney representing a partnership and a third party in a lawsuit against one of the partnership's partners. The *Responsible Citizens* court held that the trial court erred in assuming that the attorney representing the partnership also had an attorney-client relationship with the partners: "We hold here that an attorney representing a partnership does not necessarily have an attorney-client relationship with an individual partner for purposes of applying the conflict of interest rules. Whether such a relationship exists turns on finding an agreement, express or implied, that the attorney also represents the partner." (*Id.* at p. 1721.)

The court in *Responsible Citizens, supra*, 16 Cal.App.4th 1717 noted that rule 3-600(E) provides that an attorney representing an entity may also represent its directors, officers, shareholders, members "or other constituents" subject to conflict of interest rules (rule 3-310). (*Responsible Citizens, supra*, at p. 1731.) This rule, the court concluded,

neither proscribes nor requires an attorney-client relationship between the attorney for the partnership and the partners. (*Ibid.*)

Although *Responsible Citizens, supra*, 16 Cal.App.4th 1717 concerns a partnership, whereas the instant case involves a corporation, the *Responsible Citizens* court stated that with regard to rule 3-600(A) there is no bright line distinction based upon the type of entity involved. The court in *Responsible Citizens* analyzed the corporation and partnership cases interchangeably. (*Responsible Citizens, supra*, at pp. 1726-1729.)

In *Responsible Citizens*, the court concluded that the attorney's representation of the partnership did not necessarily result in the attorney also representing the partners. (*Responsible Citizens, supra*, 16 Cal.App.4th at pp. 1721, 1731.) Such is also the case with regard to Stream's representation of the corporation. Whether there was an attorney-client relationship between Stream and Becklund turns on whether there was an agreement, express or implied, that Stream represent Becklund (*id.* at p. 1721), and the nature of the representation provided by Stream (*Johnson v. Superior Court* (1995) 38 Cal.App.4th 463, 478). Here, it is undisputed there was no express representation agreement. Becklund is claiming that there was an implied representation agreement.

An implied contract is defined as "one, the existence and terms of which are manifested by conduct." (Civ. Code, § 1621.) "The distinction between *express* and *implied in fact* contracts relates only to the *manifestation of assent*; both types are based upon the expressed or apparent intention of the parties.'" (*Responsible Citizens, supra*, 16 Cal.App.4th at pp. 1732-1733.)

In *Responsible Citizens*, the court listed, without intending to be exhaustive, some of the factors to be considered in determining whether there was an implied agreement for representation. They include the type and size of the entity; the nature and scope of the attorney's engagement by the entity; the kind and extent of contacts, if any, between the attorney and the individual; and the attorney's access to information relating to the individual's interests. (*Responsible Citizens*, *supra*, 16 Cal.App.4th at p. 1733.)

The *Responsible Citizens* court added that "primary attention should be given to whether the totality of the circumstances, including the parties' conduct, implies an agreement by the partnership attorney not to accept other representations adverse to the individual partner's personal interests. . . . [O]ne of the most important facts involved in finding an attorney-client relationship is 'the expectation of the client based on how the situation appears to a reasonable person in the client's position.'" (*Responsible Citizens*, *supra*, 16 Cal.App.4th at p. 1733.)

Here, there is substantial evidence establishing there was no implied in fact agreement that Stream represent Becklund. Gabel stated in his declaration that during Stream's representation of the corporation Stream had very little contact with Becklund. During Stream's representation of the corporation, beginning in the late 1980's, Stream initially communicated primarily with Gabel, who managed the corporation's business and legal affairs. After Gabel moved out of state in 1997, Stream communicated with Cook. Even though Becklund may have communicated with Stream on occasion in connection with the corporation, this in and of itself does not establish that Stream personally represented Becklund.

Becklund's previous attorney, Reyes, discussed with Stream whether there were any representation conflicts and concluded there were none arising from Stream's representation of the corporation, Cook, and Gabel. It was not until after Becklund retained a new attorney and over 10 months of litigation between plaintiff and defendants in this case that Becklund moved to disqualify Stream.

Becklund claims Stream represented Becklund in personal matters, but Stream's declaration refutes this. Stream states he did not provide Becklund with any legal services and Becklund did not disclose any confidential information to him. Rather, when Becklund mentioned his divorce and bankruptcy, Stream referred Becklund to other attorneys who could assist Becklund. Also, when Becklund contacted Stream regarding the notice of the November directors meeting, Stream told Becklund he could not provide Becklund with any legal advice because Stream did not represent him. Stream told Becklund he should get an attorney, which Becklund did. This evidence was sufficient to support the trial court's finding that Stream did not represent Becklund.

Defendants argue that under *Woods, supra*, 149 Cal.App.3d 931, Becklund nevertheless was a client of Stream. In *Woods*, an attorney represented a husband and wife's closely held family corporation. During the couple's marital divorce proceedings, the same attorney represented the husband. The family corporation was a primary focus in the divorce proceedings. The wife moved to disqualify the attorney from participating in the divorce proceedings. (*Id.* at pp. 932-933.)

The wife argued she had revealed to the attorney information relevant to the divorce proceedings, including her opinion as to the fair market value of real property,

the economic liability of the corporation, and the corporation's likelihood of prevailing on pending litigation. The husband and his attorney claimed the wife had not disclosed any confidential information to the attorney. (*Woods, supra*, 149 Cal.App.3d at p. 933.)

The trial court denied the wife's disqualification motion, finding that the wife had not established she had disclosed any confidential information to the attorney. (*Woods, supra*, 149 Cal.App.3d at p. 934.) The court in *Woods* reversed the trial court ruling, concluding the attorney, in effect, continued to represent the wife through representing the corporation and thus could not also represent the husband against the wife in their divorce proceedings. (*Id.* at pp. 935-937.) The *Woods* court explained: "[T]he fact that [the attorney] continues to represent wife's interest in a family business which will be the focus of the marital dissolution is sufficient to disqualify [the attorney] from representing husband. Under such circumstances [the attorney] should be disqualified even in the absence of a showing that he has in fact obtained confidential information. It has long been recognized that where ethical considerations are concerned, disqualification should be ordered not only where it is *clear* that the attorney *will* be adverse to his former client but also where it *appears* that he *might*. [Citation.] Moreover, the purpose of the rules against representing conflicting interests is not only to prevent dishonest conduct, but also to avoid placing the honest practitioner in a position where he may be required to choose between conflicting duties or attempt to reconcile conflicting interests. [Citations.] Disqualification is proper here to avoid any appearance of impropriety. [Citation.]" (*Id.* at p. 936, fn. omitted.)

Woods, supra, 149 Cal.App.3d 931 is distinguishable because the court assumed the wife was a former client of the attorney in connection with personal matters, as well as a current client through representation of the family corporation. (*Id.* at pp. 935-936.) Here, the trial court found that Becklund had never been a client of Stream, either through the corporation or in connection with Becklund's personal matters. Furthermore, *Woods* was decided before the adoption in 1988 of rule 3-600(A), in which the Legislature clarified that a corporation is the client itself, acting through its highest authorized officer or other constituent. This is contrary to the *Woods* court's finding that, as attorney for the corporation, the attorney also represented the corporation's officers personally. (*Woods, supra*, at pp. 935-936.)

Woods is also factually distinguishable because it concerns an attorney representing both a closely held corporation and one of the owners of the corporation in a marital dissolution between the two corporation owners and spouses. The corporation was the primary focus of the divorce proceedings. There also was the possibility of a breach of confidence, which triggered disqualification.

Here, Becklund has not established an actual or possible breach of any confidential information triggering disqualification or that Stream may hold corporate secrets material to the issues raised in the instant lawsuit. As noted in *Goldstein v. Lees* (1975) 46 Cal.App.3d 614, 619, nothing in rule 3-310 "prohibits an attorney from accepting employment adverse to a former client if the matter has no relationship to confidential information acquired by reason of or in the course of his employment by the former client." Even assuming Becklund could be considered a former client of Stream,

there is no evidence that Stream acquired confidential information from Becklund critical to the instant lawsuit.

5. Whether the Interests of the Corporation and Those of Cook and Gabel Conflict

Apparently as an interested shareholder, Becklund also argues that disqualification of Stream is required because he is representing both the corporation and Cook and Gabel, and their interests conflict.

Defendants argue Becklund forfeited his second contention because it was not raised in the trial court. This issue was raised in the trial court in both Becklund's motion and during oral argument. Although Becklund did not mention in the trial court the relatively recent case, *Gong v. RFG Oil, Inc.* (2008) 166 Cal.App.4th 209, cited in Becklund's appellate brief, this, no doubt, was because *Gong* was decided after Becklund filed his disqualification motion and *Gong* did not become final until the California Supreme Court denied review of the case in November 2008, after the disqualification motion was denied.

Citing *Gong, supra*, 166 Cal.App.4th 209, Becklund argues that Stream should be disqualified because he is representing individuals, Cook and Gabel, whose interests are adverse to those of the corporation.

Rule 3-600(E) permits an attorney representing an entity to also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310. Rule 3-310(C) provides that an attorney shall not, without written consent, represent more than one client in a matter in which the interests of the clients potentially or actually conflict.

Becklund argues Stream violated rule 3-310(C) when he advised Cook and Gabel to dissolve their corporate relationship. This was best for Cook and Gabel but conflicted with the best interests of the corporation in remaining a viable corporation. Regardless of whether there may have been a violation of rule 3-310(C) arising from Stream's previous representation of Cook and Gabel in assisting them in terminating Becklund's relationship with the corporation, this is not pertinent to the pending litigation and disqualification motion. The instant case and disqualification motion concern Stream's representation of the corporation, Cook, and Gabel in Becklund's lawsuit concerning Cook and Gabel's alleged breach of an agreement to pay Becklund for his shares, and Cook and Gabel's failure to pay Becklund his share of proceeds from the sale of corporation property.

In *Gong, supra*, 166 Cal.App.4th 209, the minority shareholder brought a motion to disqualify the attorney representing the majority shareholder and corporation on the ground the majority shareholder and corporation had conflicting interests. After the corporation was ordered dissolved, the majority shareholder cross-claimed against the minority shareholder, seeking cancellation of the minority shareholder's shares and other relief. The court found there was a conflict in representing the corporation and majority shareholder because the buy-sell agreement required the corporation to pay for an appraiser, selected by the majority shareholder. (*Id.* at p. 213.) The minority shareholder wanted to ensure that the attorney representing the corporation was neutral. (*Ibid.*)

Here, Becklund has not established any conflict between the corporation's interests and those of Cook and Gabel. The corporation is merely named as a defendant

for purposes of creating a constructive or resulting trust. The corporation's interests in the instant lawsuit are not adverse to those of Cook and Gabel. Thus, unlike in *Gong, supra*, 166 Cal.App.4th 209, Stream is not simultaneously representing parties with adverse interests. The corporation is merely a passive litigant, and as stated in *Gong*, even "[a] potential conflict . . . does not warrant automatic disqualification of joint counsel." (*Id.* at p. 215.) Disqualification is not required when there is only a hypothetical conflict. (*Ibid.*)

6. Disposition

The order denying Becklund's motion for disqualification is affirmed. Defendants are awarded their costs on appeal.

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s/Gaut
J.

We concur:

s/McKinster
Acting P. J.

s/Miller
J.